CF0000061715

(2)

IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH

AT JABALPUR

CRIMINAL APPEAL NO. 500 /1997

APPELLANT : (IN JAIL) Gorakh Nath Pandey, son of Dev Prasad Pandey, aged 33 years, resident of village Suriya, Police Station Brikray, Distt. Patna(Bihar), at present resident of Subhash Nagar, Charcha Colliery, Distt.Sarguja (MP)

Central Jail Jabalpur

-: VERSUS :-

RESPONDENT: State of Madhya Pradesh.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

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-307

XI-HC-22

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आदेश पत्रक

मामला क्रमांक G.A. 500/97 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:-

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

10-4-2006

Miss Shipra Biswas, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J:-

By this appeal under Section 374 (2) of the Code of Criminal Procedure, the accused/appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 3rd February, 1997, passed by the Additional Sessions Judge, Baikunthpur, in Sessions Trial No.34/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for committing the murder of his wife namely, Vimla Devi, sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

The case of the prosecution, in brief, is that on 28-7-1993, Chandra Dev Pandey and accused with their family members after taking dinner went to bed in their rooms. The accused used to beat his wife. On 29-7-1993 at about 5 a.m., when Chandra Dev Pandey heard sound from the room of the accused, he went to the room of his brother Gorakhnath Pandey, the accused, and saw that the accused committed the murder of his wife Vimla Devi by assaulting with a grinding

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stone, ~~and~~ blood was oozing out of the injury. Report to that effect was lodged by Chandra Dev Pandey in Police Chowki: Charcha Colliery on which Merg.No.33/93 (Ex.P-11) was reduced into writing. Thereafter, the Investigating Officer left for the scene of occurrence and prepared Panchanama Ex.P-4 of the body of deceased Vimla Devi. The body was sent for post-mortem examination to Primary Health Centre, Baikunthpur, where Dr. G.K. Tiwari (PW-13) conducted post-mortem on the body of the deceased and prepared the post-mortem report (Ex.P-18). Grinding stone, blood stained soil and plain soil were taken into possession from the place of occurrence. Baniyan of the accused and clothes of the deceased were also taken into possession and same were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where the report (Ex.P-15) was received and Serologist report Ex.P-16 was also received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Baikunthpur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned Additional Sessions Judge, Bikaunthpur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. He also examined Dr. B.S.R. Naidu (DW-1) regarding insanity of the accused and Dr. Smt. S.K. Malhotra (DW-2) regarding the treatment taken by the accused in the Baikunthpur hospital for mental illness.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Additional Sessions Judge after hearing respective counsel for the parties, convicted and sentenced the accused, as mentioned in para-1 of this judgment.

We have heard learned counsel for the appellant Miss Shipra Biswas and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Vimla Devi is not in dispute.

As far as involvement of the accused in the crime in question is concerned, virtually there is no evidence that any one saw the accused assaulting Vimla Devi with the grinding stone or to the effect that even the accused and the deceased were sleeping in the room where the incident took place. The brother of the deceased namely, Chandra Dev Pandey (PW-10), who lodged the first information report, has turned hostile and has stated in his evidence that he has not given the ~~written~~ report and he had not seen the accused assaulting the deceased. Even he has gone to the extent of stating that on the fateful night the accused was not at his residence and two days before the incident, on account of mental illness, the accused left his house.

Even Dharamsheela Devi (PW-12), wife of Chandra Dev Pandey and sister-in-law of the accused, has also turned hostile and not supported the prosecution case. She has stated in her evidence that Vimla Devi went for sleep in her room, whereas she along with her family members were sleeping outside. In para 3 of

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आदेश की दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -47-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her evidence, she has stated that the accused left the house two days before the date of incident and he was not at the residence.

Sant Kumar Choubey (PW-1) & Mahendra (PW-2) have turned hostile. Even Govinda (PW-3) has also turned hostile and not supported the prosecution case. Ranjit Kumar Pandey (PW-6), son of Gorakhnath Pandey, the accused/ appellant, has also turned hostile and he has stated in his evidence that in the fateful night, he was not sleeping in the room where his mother was sleeping and he was sleeping with his aunt in another room. Similarly, Nasiruddin (PW-7) has also turned hostile.

Therefore, virtually, there is no evidence to connect the accused with the murder of his wife Vimla Devi. As has been mentioned earlier, as per the evidence of prosecution witnesses, the accused was not in residence on the relevant date as he had already left the house two days before the incident. Therefore, finding of the trial Court convicting and sentencing the accused under Section 302 of the I.P.C. cannot be sustained, as the same is not based on any legal evidence.

In the result, the appeal succeeds and the same is allowed. Conviction and sentence imposed upon the accused/appellant for commission of offence under Section 302 of the I.P.C. are set aside and he is acquitted of the said charge. He be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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